

# **Exhibit 24**

## **Part F**

*United States of America ex rel. Ven-a-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc., et al.,*  
Civil Action No. 01-12257-PBS

Exhibit to the July 24, 2009, Declaration of George B. Henderson, II  
In Support of United States' Common Memorandum of Law in Support of Cross-Motions for  
Partial Summary Judgment and in Opposition to the Defendants' Motions for Summary  
Judgment

**Attachment 3**

Supporting Documentation Relied Upon by Myers and Stauffer

For the State of North Carolina

# **DOJ Pharmacy Reimbursement Project**

## **North Carolina**

**July 2009**

Summary

State of: NORTH CAROLINA

## Medicaid Pharmacy Reimbursement Methodology Summary

Legend/Prescription Drugs												
"Lower of" Reimbursement Methodology												
Effective Time Period	Usual and Customary	FUL	EAC <sup>4</sup>	Lowest Charge to Other 3rd Party	SMAC	Estimated Acquisition Cost (EAC) <sup>3</sup>		SMAC Methodology	Physician Override (DAW, Brand Medically)	Dispensing Fee <sup>1</sup>		Compound Drugs
						Brand	Generic			Brand	Generic	
10/1/1989 - 12/31/1991	Y	Y	Y	Y <sup>7</sup>	N	AWP - 10% <sup>5</sup>	AWP - 10% <sup>6</sup>		Y	\$4.85	\$4.85	
1/1/1992 - 6/30/1992	Y	Y	Y	Y <sup>7</sup>	N	AWP - 10%	AWP - 10%		Y	\$5.60	\$5.60	
7/1/1992 - 11/30/2001	Y	Y	Y		N	AWP - 10%	AWP - 10%		Y	\$5.60	\$5.60	
12/1/2001 - Present	Y	Y	Y		Y	AWP - 10%	AWP - 10%	<sup>2</sup>	Y	\$4.00	\$5.60	<sup>5</sup>

Data taken from North Carolina Medicaid State Plan Amendments

Data provided by Weeks 10/21/08 deposition and exhibits

Data provided by Lisa Weeks, Pharmacy Policy Supervisor

<sup>1</sup> Per TN #89-09 et al. (Ex. 11, 12), the dispensing fee is paid to all providers for the initial dispensing. Refills within the same month are not paid a dispensing fee.<sup>2</sup> SMAC methodology - reimbursement is based on 150 percent of the lowest priced generic. In cases where 150 percent results in a price less than the cost of the second-lowest generic product, at least an additional 10 percent margin is added to the cost of the second-lowest drug to establish the MAC price. (Deposition pp. 45-46, 49) For established generic drugs with only one supplier, the MAC price is established between the actual acquisition cost and the average wholesale price of the generic drug. A minimum reimbursement of 20 percent above actual acquisition is guaranteed for these drugs. In most cases, MAC pricing is substantially higher than the 20 percent. (Deposition pp. 95, 263-265, Ex. 13)<sup>3</sup> Per TN #92-05 et al., the state uses First DataBank for pricing (Ex. 12). (See also deposition pp. 43-44, 91-92)<sup>4</sup> Per TN #89-09 et al., EAC is referred to as NCEAC or North Carolina Estimated Acquisition Cost. (See also deposition pp. 86-87)<sup>5</sup> Compound drugs have been treated like generics regarding dispensing fee (\$5.60) since the 1992 methodology change.

10/1/1989 – 12/31/1991

#92-5  
replace this pageAttachment 4.19-B  
Section 12, Page 1aMEDICAL ASSISTANCE  
State NORTH CAROLINA

## PAYMENTS FOR MEDICAL AND REMEDIAL CARE AND SERVICE

## 1. Other Drugs -

Reimbursement for covered drugs other than the multiple-source drugs with HCFA upper limits shall not exceed the lower of:

\* lower of

- (i) The North Carolina estimated acquisition cost (NCEAC) for the drug plus a reasonable dispensing fee; or
- (ii) The provider's lowest charge to other third party payors; or
- (iii) The provider's usual and customary charge to the general public for the drug.

## 2. North Carolina Estimated Acquisition Cost (NCEAC) \* FN #4

NCEAC is defined as the reasonable and best estimate of the price paid by providers for a drug as obtained from a manufacturer or other legal distributor. As determined by the Division the reasonable and best estimate is based on the average wholesale price (AWP) less 10 percent. For the AWP information the Division uses the Red Book, manufacturer's price list, or other nationally published sources. Telephone contact with manufacturer or distributors may be utilized when a published source is not available.

\* EAC = AWP-10%

## 3. Dispensing Fees

Dispensing fees are determined on the basis of surveys that are conducted periodically by Division of Medical Assistance (DMA) or other recognized sources and takes into account various pharmacy operational costs, such as salary, overhead, etc. Between surveys the dispensing fee may be adjusted based upon various factors, i.e., Consumer Price Index (CPI). The Division reviews the fees of other states and other information (i.e., National Pharmacy Surveys). The dispensing fee is paid to all providers for the initial dispensing. Refills within the same month are not paid a dispensing fee. The dispensing fee is \$4.85.

\* FN #1  
\* DF

TN No. 89-02  
Supersedes  
TN No. NEW

SEP 18 1990  
Approval Date \_\_\_\_\_

Eff. Date 10/1/89

HHD137-0248

Weeks Ex. 11

faxed to LHC  
7/7/08

Attachment 4.19-B  
Section 12, Page 1

MEDICAL ASSISTANCE  
State NORTH CAROLINA

PAYMENTS FOR MEDICAL AND REMEDIAL CARE AND SERVICE

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12. Prescribed drugs, dentures, and prosthetic devices; and eye-glasses prescribed by a physician skilled in diseases of the eye or by an optometrist.

a. Prescribed drugs.

Drugs will be reimbursed at the lowest of: the estimated acquisition cost as described below plus a reasonable dispensing fee; the provider's lowest charge to other third party payors; <sup>lowest</sup> or, the provider's charge to the general public. A dispensing <sup>charge</sup> fee will not be paid for prescriptions refilled in the same month, whether it is the same drug or generic equivalent drug. *FNH*

Multiple Source Drugs - North Carolina has implemented the list <sup>FDL</sup> of drugs and their prices as published by the Health Care Financing Administration. All drugs on this list are reimbursed at limits set by HCFA unless the physician writes in his own handwriting on the face of the prescription "brand necessary," <sup>\*</sup> *BMN* dispense as written," or words of similar meaning.

*Replaced  
by 01-23*

TN No. 89-09

Supersedes

TN No. 89-19

*dat  
2/11/01*

SEP 18 1990

Approval Date \_\_\_\_\_

Eff. Date 10/1/90



NC Department of Health and Human Services (Lisa Weeks)

October 21, 2008

Raleigh, NC

23 (Pages 86 to 89)

<p style="text-align: right;">86</p> <p>1 limit prior, earlier today?</p> <p>2 A. Yes.</p> <p>3 Q. The paragraph that you just read refers</p> <p>4 to the estimated acquisition cost as described</p> <p>5 below.</p> <p>6 Do you see that there?</p> <p>7 A. Yes.</p> <p>8 Q. Does the state plan define the</p> <p>9 estimated acquisition cost below, as that</p> <p>10 paragraph says that it does?</p> <p>11 A. No, not in that next section.</p> <p>12 Q. Does it describe the estimated</p> <p>13 acquisition cost as part of the plan?</p> <p>14 A. It does as part of the plan.</p> <p>15 Q. And where does it describe it? What</p> <p>16 paragraph?</p> <p>17 A. In another paragraph under North</p> <p>18 Carolina estimated acquisition cost.</p> <p>19 Q. And could you read that out loud,</p> <p>20 please?</p> <p>21 A. Yes. NCEAC --</p> <p>22 Q. What does that stand for, I'm sorry?</p>	<p style="text-align: right;">88</p> <p>1 when a public source was not available?</p> <p>2 A. I believe on occasion but very rarely.</p> <p>3 Q. And by very rarely, how often per year</p> <p>4 do you mean?</p> <p>5 A. Would only be for manual claims that we</p> <p>6 didn't have the AWP available. And I don't have</p> <p>7 an exact number, but it's very rare.</p> <p>8 Q. Very rare that you contacted them, or</p> <p>9 very rare that you did not have the AWP</p> <p>10 available?</p> <p>11 A. Both.</p> <p>12 Q. And if you look at the prior paragraph,</p> <p>13 No. 1, other drugs, would you take a minute to</p> <p>14 look that over, please?</p> <p>15 A. Yes.</p> <p>16 (Pause.)</p> <p>17 A. Okay.</p> <p>18 Q. Does this reflect the reimbursement</p> <p>19 logic that you set forth at the earlier part of</p> <p>20 the deposition as far as the formula?</p> <p>21 A. It's similar.</p> <p>22 Q. And why don't you explain that to me?</p>
<p style="text-align: right;">87</p> <p>1 A. North Carolina Estimated Acquisition</p> <p>2 Cost.</p> <p>3 Q. Thank you.</p> <p>4 A. Is defined as the reasonable and best</p> <p>5 estimate of the price paid by providers for a</p> <p>6 drug, as obtained from a manufacturer or other</p> <p>7 legal distributor. As determined by the</p> <p>8 division, the reasonable and best estimate is</p> <p>9 based on the average wholesale price, (AWP) less</p> <p>10 ten percent. For the AWP information, the</p> <p>11 division uses the Red Book manufacturer's price</p> <p>12 list or other nationally published sources.</p> <p>13 Telephone contact with manufacturer or</p> <p>14 distributors may be utilized when a published</p> <p>15 source is not available.</p> <p>16 Q. Thank you. Is that the estimated</p> <p>17 acquisition cost as described below that was</p> <p>18 referred to on the prior page?</p> <p>19 A. Yes.</p> <p>20 Q. And the last line of that paragraph</p> <p>21 that begins with telephone contact, did North</p> <p>22 Carolina contact manufacturers or distributors</p>	<p style="text-align: right;">89</p> <p>1 A. Over time it's changed somewhat, but</p> <p>2 it's similar in that North Carolina uses the</p> <p>3 lesser of logic. We will pay the estimated</p> <p>4 acquisition cost or the providers -- or the</p> <p>5 provider's usual and customary. We no longer</p> <p>6 have the lowest charge to other third-party</p> <p>7 payors in our state plan.</p> <p>8 Q. And again, what is the date of the</p> <p>9 state plan that we are reviewing right now?</p> <p>10 A. 10-1-89.</p> <p>11 MS. YAVELBERG: I'd like to mark this</p> <p>12 next document as Plaintiff's Exhibit 12.</p> <p>13 (The document referred to was</p> <p>14 marked Plaintiff's Exhibit Weeks 012 for</p> <p>15 identification.)</p> <p>16 Q. Ms. Weeks, do you recognize this</p> <p>17 document?</p> <p>18 A. Yes.</p> <p>19 Q. And what is it?</p> <p>20 A. It's another North Carolina State plan.</p> <p>21 Q. And what is this one dated?</p> <p>22 A. July 1, 1992.</p>

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NC Department of Health and Human Services (Lisa Weeks)

October 21, 2008

Raleigh, NC

11 (Pages 38 to 41)

<p style="text-align: right;">38</p> <p>1 A. It's approved by the Medicaid director, 2 it's approved by the secretary of health and 3 human services before it goes to CMS. 4 Q. Where is it submitted? 5 A. Where? 6 Q. Where is it formally submitted? 7 A. From the secretary's office. 8 Q. And to whom is it submitted? 9 A. CMS. 10 Q. And what is CMS? 11 A. Centers for Medicare and Medicaid 12 Services. 13 Q. Is that a state organization? 14 A. That's a federal organization. 15 Q. And what is the relationship between 16 that federal organization and the North Carolina 17 Medicaid program? 18 A. The North Carolina Medicaid program 19 obtains the federal funding from there, for the 20 Medicaid program. 21 Q. The federal share? 22 A. The federal share, right.</p>	<p style="text-align: right;">40</p> <p>1 A. Yes. 2 Q. Is that the federal upper limit that 3 you're referring to? 4 A. Yes. 5 Q. And when you said, I'm sorry, if you 6 could clarify this. The federal upper limit 7 applies to all drugs or only certain types of 8 drugs? 9 A. Only certain generics. 10 Q. And remind me again, I think earlier 11 you stated that the state's formula involved, you 12 said average wholesale price minus ten percent, 13 the federal upper limit, the state maximum 14 allowable costs? 15 A. Yes. 16 Q. And usual and customary? 17 A. Right. 18 Q. I'd like to go through each of those, 19 to get a better understanding of what all those 20 terms are, okay? 21 A. Okay. 22 Q. So the federal upper limit, I think</p>
<p style="text-align: right;">39</p> <p>1 Q. Does the state maintain copies of the 2 plans that it submits? 3 A. Yes. 4 Q. I believe earlier you referred to the 5 federal upper limit. Do you remember that? 6 A. Yes. 7 Q. What do you mean by federal upper 8 limit? What does that stand for? 9 A. The federal upper limit is a maximum 10 cost set on certain generic drugs by CMS. 11 Q. And where is the federal upper limit? 12 Where is that term defined or referenced from? 13 A. I don't understand the question. 14 Q. Is it a state term? Is the federal 15 upper limit something that the state has anything 16 to do with? 17 A. No, it's the federal upper limit. 18 Q. Let me refer you to Exhibit 2, which is 19 this regulation here, Section 447.301 and .331 20 and .332. If you flip to the backside, Section 21 447.332, do you see that there, upper limits for 22 multiple source drugs?</p>	<p style="text-align: right;">41</p> <p>1 you've testified that it's a federal determined 2 amount, determined limit on payment? 3 A. Yes. 4 Q. And the state does not set that amount, 5 is that correct? 6 A. That's correct. 7 Q. Next, let's talk about estimated 8 acquisition costs, which is referred to in that 9 regulation a little bit earlier. 10 Does North Carolina itself define 11 estimated acquisition cost? 12 A. North Carolina has defined it for North 13 Carolina. 14 Q. And where has North Carolina written 15 the definition for estimated acquisition cost? 16 A. In the state plan. 17 Q. And what does EAC, is that a common 18 abbreviation for estimated acquisition cost? If 19 I call it EAC, is that something that you will 20 understand? 21 A. Yes. 22 Q. And how does the State of North</p>

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\*FN #16  
(pp. 41-43)



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October 21, 2008

12 (Pages 42 to 45)

<p style="text-align: right;">42</p> <p>1 Carolina define EAC or estimated acquisition</p> <p>2 costs?</p> <p>3 <b>A. The state defines that as AWP minus ten</b></p> <p>4 <b>percent.</b></p> <p>5 Q. And in what year did the state define</p> <p>6 estimated acquisition cost of AWP minus ten</p> <p>7 percent?</p> <p>8 MR. KATZ: Objection, form.</p> <p>9 <b>A. Early '90s, I think 1990.</b></p> <p>10 Q. And prior to that time, what was the</p> <p>11 definition of estimated acquisition cost?</p> <p>12 <b>A. AWP, I believe.</b></p> <p>13 Q. And was that the first time that North</p> <p>14 Carolina has defined estimated acquisition cost?</p> <p>15 <b>A. I'm sorry, I don't understand what you</b></p> <p>16 <b>just asked.</b></p> <p>17 Q. The AWP minus ten percent was I think</p> <p>18 you said roughly in 1990?</p> <p>19 MR. KATZ: Objection to form.</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. And prior to that time, North Carolina</p> <p>22 had defined estimated acquisition cost as AWP?</p>	<p>1 <b>information.</b></p> <p>2 Q. Does North C</p> <p>3 source available for a</p> <p>4 <b>A. No.</b> average wholesale prices?</p> <p>5 MR. KATZ: C</p> <p>6 Q. Why did North</p> <p>7 wholesale price min</p> <p>8 estimated acquisitions</p> <p>9 MR. KATZ: C</p> <p>10 <b>A. It was the sta</b></p> <p>11 <b>cost of drugs.</b> te's best estimate of the</p> <p>12 Q. Why wouldn't</p> <p>13 acquisition cost on eve</p> <p>14 submitted? ry claim that was</p> <p>15 <b>A. Because we do</b></p> <p>16 Q. What if the pha</p> <p>17 every claim that they s</p> <p>18 <b>A. We're not -- ou</b></p> <p>19 <b>accommodate that.</b> or processes would not</p> <p>20 Q. Why not?</p> <p>21 <b>A. Because of the</b></p> <p>22 <b>process.</b> volume of claims we</p>	<p style="text-align: right;">44</p>
<p style="text-align: right;">43</p> <p>1 <b>A. Um-hum.</b></p> <p>2 MR. KATZ: Objection to form.</p> <p>3 Q. Do you mean AWP with no discount?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. And what does AWP stand for?</p> <p>6 <b>A. Average wholesale price.</b></p> <p>7 Q. And prior to 1990, when the state first</p> <p>8 proposed AWP with no discount, was that</p> <p>9 definition with estimated acquisition cost used?</p> <p>10 MR. KATZ: Objection to form.</p> <p>11 <b>A. No, I believe that, if I remember, CMS</b></p> <p>12 <b>would not approve the state plan without a</b></p> <p>13 <b>discount.</b></p> <p>14 Q. A discount to what?</p> <p>15 <b>A. To AWP.</b></p> <p>16 Q. Where does North Carolina get its AWP's?</p> <p>17 <b>A. From First Data Bank.</b></p> <p>18 Q. And why would North Carolina use First</p> <p>19 Data Bank to get average wholesale price</p> <p>20 information?</p> <p>21 <b>A. Because they provided a file that we</b></p> <p>22 <b>can use in our claims processing that has that</b></p>	<p>1 Q. You talked about a</p> <p>2 the formula, the state max</p> <p>3 <b>A. Yes.</b> another component of</p> <p>4 Q. Could you describ</p> <p>5 <b>A. It's a state specific</b> what that means?</p> <p>6 <b>drugs that have more the</b> limit on generic</p> <p>7 Q. And how does a st</p> <p>8 cost affect the reimburs</p> <p>9 MR. KATZ: Object</p> <p>10 <b>A. It's one of the ref</b> to form.</p> <p>11 <b>we use when we process</b> reference prices that</p> <p>12 Q. And if you could</p> <p>13 You mentioned the variou</p> <p>14 formula. How do they --</p> <p>15 processing know which b</p> <p>16 <b>A. The claims proces</b> sis to pay a claim?</p> <p>17 <b>the lower or the lowest</b> osing systems selects</p> <p>18 <b>mentioned pricing meth</b> of the previously</p> <p>19 <b>percent, the federal upp</b> edology, AWP minus ten</p> <p>20 <b>maximum allowable cost</b> er limit, the state</p> <p>21 <b>customary.</b> list or usual and</p> <p>22 Q. Does the state max</p>	<p style="text-align: right;">45</p>

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22 (Pages 82 to 85)

<p style="text-align: right;">82</p> <p>1 A. Yes.</p> <p>2 Q. And if you look at the second sentence:</p> <p>3 We have implemented a policy of not allowing</p> <p>4 providers to bill more for Medicaid prescriptions</p> <p>5 than they are receiving from the lowest third-</p> <p>6 party plan.</p> <p>7 Do you see that there?</p> <p>8 A. Yes.</p> <p>9 Q. Did the state implement that provision?</p> <p>10 A. Not that I'm aware of.</p> <p>11 Q. And why not?</p> <p>12 A. I don't think it was possible to</p> <p>13 implement.</p> <p>14 Q. Why not?</p> <p>15 A. Because I don't think the state had</p> <p>16 access to the lowest third-party plan costs.</p> <p>17 Q. So it is -- but it is part of the</p> <p>18 proposed reimbursement policy, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And the state's reimbursement</p> <p>21 methodology was consistent with the state plan,</p> <p>22 or inconsistent?</p>	<p style="text-align: right;">84</p> <p>1 A. Yes.</p> <p>2 Q. What is it?</p> <p>3 A. Again, it's North Carolina State plan</p> <p>4 sections regarding drug reimbursement.</p> <p>5 Q. And there's some handwriting on this</p> <p>6 and also some markings on it. Did you make those</p> <p>7 markings?</p> <p>8 A. No.</p> <p>9 Q. Were they -- they were on the document</p> <p>10 as handed to you, correct?</p> <p>11 A. Yes.</p> <p>12 Q. Had you made the markings at any time</p> <p>13 prior to today's deposition?</p> <p>14 A. No.</p> <p>15 Q. If you'll look at the first page, which</p> <p>16 is dated 10-1-1990, do you see that there on the</p> <p>17 bottom right-hand corner?</p> <p>18 A. Yes.</p> <p>19 Q. And if you look at Section 12A</p> <p>20 prescribed drugs, will you read that out loud,</p> <p>21 please?</p> <p>22 A. Yes. Drugs will be reimbursed at the</p>
<p style="text-align: right;">83</p> <p>1 A. It was consistent.</p> <p>2 Q. Did it exercise this option of not</p> <p>3 allowing providers to bill more for Medicaid</p> <p>4 prescriptions than are receiving, than they are</p> <p>5 receiving from the lowest third-party plan?</p> <p>6 A. I believe that it was stated that that</p> <p>7 would be good if that were possible, but I don't</p> <p>8 think the state was able to enforce it.</p> <p>9 Q. And why not?</p> <p>10 A. Because I don't believe the state had</p> <p>11 access to the costs associated with other third-</p> <p>12 party plans.</p> <p>13 MS. YAVELBERG: I'd like to mark this</p> <p>14 next document as Plaintiff's Exhibit 11.</p> <p>15 (The document referred to was</p> <p>16 marked Plaintiff's Exhibit Weeks 011 for</p> <p>17 identification.)</p> <p>18 Q. It's two pages. I've handed you</p> <p>19 Exhibit 11, Ms. Weeks. Do you have that there?</p> <p>20 A. Yes.</p> <p>21 Q. It's a two-page document.</p> <p>22 Do you recognize this document?</p>	<p style="text-align: right;">85</p> <p>1 lowest of the estimated acquisition cost, as</p> <p>2 described below, plus a reasonable dispensing</p> <p>3 fee, the provider's lowest charge to other third-</p> <p>4 party payors or the provider's charge to the</p> <p>5 general public. A dispensing fee will not be</p> <p>6 paid for prescriptions refilled in the same way,</p> <p>7 whether it is the same drug or generic equivalent</p> <p>8 drug.</p> <p>9 Q. And the next paragraph refers to</p> <p>10 multiple source drugs. Do you see that there?</p> <p>11 A. Yes.</p> <p>12 Q. And it says: North Carolina has</p> <p>13 implemented a list of drugs and the prices, as</p> <p>14 published by the Health Care Finance</p> <p>15 Administration.</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Is that the same list published by the</p> <p>19 Health Care Finance Administration that we</p> <p>20 referred to in the prior state plan?</p> <p>21 A. Yes.</p> <p>22 Q. And as we refer to as the federal upper</p>

\* FN #7  
Re: Lowest  
charge to  
Other 3rd  
Party

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23 (Pages 86 to 89)

<p style="text-align: right;">86</p> <p>1 limit prior, earlier today?</p> <p>2 A. Yes.</p> <p>3 Q. The paragraph that you just read refers</p> <p>4 to the estimated acquisition cost as described</p> <p>5 below.</p> <p>6 Do you see that there?</p> <p>7 A. Yes.</p> <p>8 Q. Does the state plan define the</p> <p>9 estimated acquisition cost below, as that</p> <p>10 paragraph says that it does?</p> <p>11 A. No, not in that next section.</p> <p>12 Q. Does it describe the estimated</p> <p>13 acquisition cost as part of the plan?</p> <p>14 A. It does as part of the plan.</p> <p>15 Q. And where does it describe it? What</p> <p>16 paragraph?</p> <p>17 A. In another paragraph under North</p> <p>18 Carolina estimated acquisition cost.</p> <p>19 Q. And could you read that out loud,</p> <p>20 please?</p> <p>21 A. Yes. NCEAC --</p> <p>22 Q. What does that stand for, I'm sorry?</p>	<p style="text-align: right;">88</p> <p>1 when a public source was not available?</p> <p>2 A. I believe on occasion but very rarely.</p> <p>3 Q. And by very rarely, how often per year</p> <p>4 do you mean?</p> <p>5 A. Would only be for manual claims that we</p> <p>6 didn't have the AWP available. And I don't have</p> <p>7 an exact number, but it's very rare.</p> <p>8 Q. Very rare that you contacted them, or</p> <p>9 very rare that you did not have the AWP</p> <p>10 available?</p> <p>11 A. Both.</p> <p>12 Q. And if you look at the prior paragraph,</p> <p>13 No. 1, other drugs, would you take a minute to</p> <p>14 look that over, please?</p> <p>15 A. Yes.</p> <p>16 (Pause.)</p> <p>17 A. Okay.</p> <p>18 Q. Does this reflect the reimbursement</p> <p>19 logic that you set forth at the earlier part of</p> <p>20 the deposition as far as the formula?</p> <p>21 A. It's similar.</p> <p>22 Q. And why don't you explain that to me?</p>
<p style="text-align: right;">87</p> <p>1 A. North Carolina Estimated Acquisition</p> <p>2 Cost.</p> <p>3 Q. Thank you.</p> <p>4 A. Is defined as the reasonable and best</p> <p>5 estimate of the price paid by providers for a</p> <p>6 drug, as obtained from a manufacturer or other</p> <p>7 legal distributor. As determined by the</p> <p>8 division, the reasonable and best estimate is</p> <p>9 based on the average wholesale price, (AWP) less</p> <p>10 ten percent. For the AWP information, the</p> <p>11 division uses the Red Book manufacturer's price</p> <p>12 list or other nationally published sources.</p> <p>13 Telephone contact with manufacturer or</p> <p>14 distributors may be utilized when a published</p> <p>15 source is not available.</p> <p>16 Q. Thank you. Is that the estimated</p> <p>17 acquisition cost as described below that was</p> <p>18 referred to on the prior page?</p> <p>19 A. Yes.</p> <p>20 Q. And the last line of that paragraph</p> <p>21 that begins with telephone contact, did North</p> <p>22 Carolina contact manufacturers or distributors</p>	<p style="text-align: right;">89</p> <p>1 A. Over time it's changed somewhat, but</p> <p>2 it's similar in that North Carolina uses the</p> <p>3 lesser of logic. We will pay the estimated</p> <p>4 acquisition cost or the providers -- or the</p> <p>5 provider's usual and customary. We no longer</p> <p>6 have the lowest charge to other third-party</p> <p>7 payors in our state plan.</p> <p>8 Q. And again, what is the date of the</p> <p>9 state plan that we are reviewing right now?</p> <p>10 A. 10-1-89.</p> <p>11 MS. YAVELBERG: I'd like to mark this</p> <p>12 next document as Plaintiff's Exhibit 12.</p> <p>13 (The document referred to was</p> <p>14 marked Plaintiff's Exhibit Weeks 012 for</p> <p>15 identification.)</p> <p>16 Q. Ms. Weeks, do you recognize this</p> <p>17 document?</p> <p>18 A. Yes.</p> <p>19 Q. And what is it?</p> <p>20 A. It's another North Carolina State plan.</p> <p>21 Q. And what is this one dated?</p> <p>22 A. July 1, 1992.</p>

\*  
FN #7  
Re: lowest  
charge to  
other 3rd  
party  
(pp. 88-90)

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NC Department of Health and Human Services (Lisa Weeks)

October 21, 2008

## Raleigh, NC

24 (Pages 90 to 93)

<p style="text-align: right;">90</p> <p>1 Q. I'd like you to -- and what section of</p> <p>2 the state plan is it?</p> <p>3 A. It is regarding reimbursement of drugs.</p> <p>4 Q. And if you look at that first section,</p> <p>5 No. 1, other drugs, and you look at that</p> <p>6 reimbursement formula there?</p> <p>7 A. Yes.</p> <p>8 Q. I think you were just discussing that</p> <p>9 the lowest third-party plan portion of the</p> <p>10 reimbursement formula was omitted at a certain</p> <p>11 time, is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. And this 1992 plan does not include</p> <p>14 that language, correct?</p> <p>15 A. That's correct.</p> <p>16 Q. Okay. Does this plan reflect the 1992</p> <p>17 North Carolina reimbursement formula for drugs?</p> <p>18 A. Yes.</p> <p>19 Q. And what was the formula as set forth</p> <p>20 in the state plan?</p> <p>21 A. Okay. The North Carolina estimated</p> <p>22 acquisition cost, okay, I'm sorry, I don't</p>	<p style="text-align: right;">92</p> <p>1 manufacturer's price list or other nationally</p> <p>2 published sources, telephone contact with</p> <p>3 manufacturer distributors may be utilized when a</p> <p>4 published source is not available.</p> <p>5 Q. Did North Carolina in fact obtain AWP</p> <p>6 information from the First Data Bank price update</p> <p>7 service, manufacturer's list price or other</p> <p>8 nationally published sources?</p> <p>9 A. Yes.</p> <p>10 Q. And this document is dated 1992,</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. From 1992 to the present, did North</p> <p>14 Carolina obtain its AWP information from the</p> <p>15 First Data Bank price update service,</p> <p>16 manufacturer's price list or other nationally</p> <p>17 published sources?</p> <p>18 A. Yes.</p> <p>19 MS. YAVELBERG: I'd like to mark this</p> <p>20 next document as Exhibit 13.</p> <p>21 (The document referred to was</p> <p>22 marked Plaintiff's Exhibit Weeks 013 for</p>
<p style="text-align: right;">91</p> <p>1 understand the question.</p> <p>2 Q. What was the reimbursement formula, as</p> <p>3 set forth in the state plan in 1992?</p> <p>4 A. Okay. The state reimbursed based on</p> <p>5 AWP minus ten percent or the provider's usual and</p> <p>6 customary charge to the general public at the</p> <p>7 lower of either of those.</p> <p>8 Q. And did North Carolina define estimated</p> <p>9 acquisition cost in the state plan?</p> <p>10 A. Yes.</p> <p>11 Q. And where did it do so?</p> <p>12 A. It does so in this section two, North</p> <p>13 Carolina estimated acquisition cost. It defines</p> <p>14 it as AWP less ten percent.</p> <p>15 Q. And does the state plan say where North</p> <p>16 Carolina obtained information about average</p> <p>17 wholesale price?</p> <p>18 A. Yes.</p> <p>19 Q. And where is that from? Where does it</p> <p>20 say it obtained the information?</p> <p>21 A. It says it obtained it from using the</p> <p>22 First Data Bank price update service,</p>	<p style="text-align: right;">93</p> <p>1 identification.)</p> <p>2 MS. YAVELBERG: It's three pages.</p> <p>3 Q. Ms. Weeks, if you can take a minute to</p> <p>4 look the document over.</p> <p>5 (Pause.)</p> <p>6 Q. And do you recognize this document?</p> <p>7 A. Yes.</p> <p>8 Q. What is it?</p> <p>9 A. It is, again North Carolina state plan</p> <p>10 section for drug reimbursement.</p> <p>11 Q. And the first page of the document that</p> <p>12 I've handed you.</p> <p>13 A. Yes.</p> <p>14 Q. What is this document? What is this</p> <p>15 page?</p> <p>16 A. It looks like the page where the state</p> <p>17 plan was transmitted to CMS.</p> <p>18 Q. Is it a specific form?</p> <p>19 A. Yes.</p> <p>20 Q. And what is the form?</p> <p>21 A. It says transmittal and notice of</p> <p>22 approval of state plan material.</p>

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